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Ardith Gingell
Policy Analyst
Operations Management
Ministry of Environment
PO Box 9342 Stn Prov Govt
Victoria BC V8W 9M1

Dear Ms. Gingell:

Re: Final Policy Direction – Prevention of Site Contamination from Soil Relocation

The Urban Development Institute (UDI) respectfully submits its comments regarding the *Final Policy Direction – Prevention of Site Contamination from Soil Relocation Paper* that was released earlier this year. As you know, UDI has been involved throughout the Ministry’s process to develop a new policy on soil relocation.

Our Contaminated Sites Committee met on April 1 to discuss the *Final Policy Direction* and has the following comments and recommendations regarding the proposed regulatory changes:

- **5.1 Definition of Waste Soil** – UDI supports the Ministry providing further clarity about what is considered waste (and therefore requires a *Waste Discharge Authorization*).
- **5.2 Notification Process** – We ask that the Ministry provide additional clarity regarding the second point under this section. We assume that the “... *applicable land use standards* ...” is for the receiving site – not the donor site.

It would also assist our members if the Ministry could provide further information about the various compliance paths noted in this section - “... *an authorization under Part 2 of the Environmental Management Act and the Waste Discharge Regulation, independent remediation, Certificates of Compliance or Approvals in Principle* ...”. A Ministry Bulletin or Fact Sheet identifying which ones are to be used in various circumstances would be helpful.

- **5.3 Triggers for Notification** – UDI is supportive of the increased flexibility offered in this section with the increase in the amount of soil that can be moved before a *Soil Relocation Notification and Certification* form would be required. However, we are seeking clarity regarding the movement of soils within a site. Many sites are large – several hectares, and as noted above soils are moved within sites for several reasons such as pre-loading and grading. It is not clear if proponents moving soil between

parcels or across roads within the same site would trigger the chemical characterization and vapour testing noted below.

- **5.4 Soil Chemical Characterization Requirement** – UDI is not opposed to the new requirement, as it provides more clarity about when soil chemical characterization is needed. Our members are already conducting a chemical characterization of the soil they are relocating in many cases. It is our understanding that the procedure for characterization of a bulk quantity of soil is open to interpretation between environmental consulting firms. Although Technical Guidance Document 1 (Site Characterization and Confirmation Testing) provides an excellent basis for soil characterization requirements, there appears to be a broad discrepancy between consultants for procedures regarding soil characterization for transfer. We feel it would be beneficial to the industry and for environmental protection if the Ministry to provide additional commentary regarding expectations for characterization of volumes of soil in various soil transfer scenarios.
- **5.5 Notification of Local Government** – Although UDI has been supportive of local governments being notified about soils being moved into their communities, we are concerned about the logistical challenges, project work scheduling, and expected costs associated with a notification requirement to municipalities two weeks prior to soil transfer. Currently, firms involved in the soil relocation do not know which local governments will be receiving soils until near the end of the process. This allows them to identify the least cost locations. In some cases the amount of soil that needs to be moved increases because additional material is discovered under a structure that has been removed from a site. Because of the new requirements, soil relocation firms will have to secure and reserve receiving sites weeks in advance at a higher cost, and they will also likely have to substantially overestimate the amount of soil they are moving. UDI is not opposed to local governments receiving notice through the electronic database the Ministry is considering. However, since many municipalities already have permitting and approval requirements for soil transfers, we do not believe municipalities require as much advance notice of shipments, and we would be concerned that further notice may result in them approving the shipments of soil.
- **5.6 Notification of Indigenous Groups** – UDI is also supportive of Indigenous groups being notified about soil relocation when it occurs on sites located within a traditional territory. We do however, have the same reservations noted above regarding the two-week notice period and the need to ensure that the notice does not evolve into the need for First Nation approvals. We also ask that the Province fulfill this requirement to notify the relevant indigenous groups. It will not be clear to our members, which First Nation groups are relevant for a soil relocation. This is further complicated as territorial boundaries change through ongoing dialogue with Indigenous communities across British Columbia. As this is a Provincial obligation, it would be best that the Ministry notify who they believe should receive the information.

- **5.7 Offences and Penalties** – Few details are provided in the *Final Policy Direction* regarding the Administrative Monetary Penalties (AMPs) that are being considered by the Ministry. It is not clear when the AMPs would be used or the amounts of the penalties. Further consultation with the industry is needed before they are put in place. We also recommend that before AMPs are considered, the Ministry wait until the new soil relocation regime is implemented and adjustments and the requested clarifications are provided. If specific compliance issues occur, then the Ministry can proceed with developing AMPs.
- **5.8 Soil Disposal at Landfills** – UDI is supportive of this proposal because it would provide additional options to dispose of soils.
- **5.9 Requirements for High Volume Receiving Sites** – UDI is not opposed to the intent behind the proposal to establish requirements for sites receiving 20,000 cubic metres of soil over a lifetime. However, we are concerned that this provision could potentially include soils utilized for development activity such as for pre-loading, grading or for increasing flood construction levels. We are aware of one industrial development site where 300,000 cubic metres of fill are required. If the soils for these sites correspond to the land use, it is not clear why operational management plans and annual reports are needed. We ask that this provision apply to sites that are being used as landfills for soils and that it not apply to development sites. In addition, it is not clear if requirements for high volume receiving sites for temporary pre-loading of greater than 20,000 cubic metres of soil will apply to each property that the same soil is temporarily transferred to. We ask that the Ministry consider an exemption for high volume sites where pre-load soil is transferred on a temporary basis.
- **5.10 Management of Vapour in Soil** – This proposal could again lead to logistical challenges and increased costs for soil relocations as the material will effectively have to be handled and tested at both the donor and receiving sites. There also may be technical challenges, which may make compliance difficult. For example, the large space requirements needed for testing may not be feasible on all sites.

In cases where vapour concentrations at a site exceed the standards and it is determined that the groundwater is the source of the exceedance. We propose that the soil should be approved for relocation provided data confirms the soil is not the source of the vapour exceedances. Similarly, if the vapour source is from a deeper soil contamination and contaminated soils were to remain on Site, we suggest that the soil be approved for relocation.

- **5.11 Salt Contamination** – UDI recommends that the Ministry consider exempting the use of dredged marine sediments from the requirements when they are used temporarily for pre-loading sites. Builders with several sites would likely “recycle” this material by moving it between their development sites – as opposed to using dredged marine sediments only once and disposing of the material only to have to re-dredge new material for the next pre-load site for each of their projects. However, this practice is discouraged because the *Contaminated Soil Relocation Agreement* process is required

when this material is moved from site to site – even if the use is temporary as with pre-loading. We request that the Ministry consider an exemption for this use.

We also request, that salt contaminated soil be permitted for relocation and use as flood protection fill or diking materials along marine or estuarine shorelines.

In addition to the above comments regarding the Ministry's specific proposals for improving the soil relocation regime, UDI also has other issues that were not included in the *Final Policy Direction*, which we ask the Ministry to address.

- **High Background Concentrations** – If receiving sites have naturally greater concentrations of certain chemicals (not associated with Potential Chemicals of Concern on a donor site), we ask that the Ministry consider allowing these receiving sites, through the proposed *Contaminated Soil Relocation Agreement* process, to receive soils from donor sites with equivalent concentrations of those chemicals – even if the background concentrations are higher than the applicable land use designation. In general, the procedure for determining background soil quality (Protocol 4) is challenging in urban areas, often due to lack of background investigation locations, and the approval timeline is typically not acceptable for a typical land development schedule. This usually means that soil with 'contamination' likely associated with local background conditions is required to be managed as contaminated soil. For a typical land development project, this often means excavation and trucking of 'contaminated' soil for transfer to a licenced facility or landfill, when that soil could perhaps be better managed within similar land classifications having similar concentrations. This action would also provide the added benefit of supporting the Ministry's desire to increase the reuse of soils locally and reduce the transfer of soils to landfills to truly impacted materials. In addition, Protocol 4 Regional estimates for background concentrations in soil for inorganic substances does not adequately consider the diverse geology (and associated background concentrations for different soil types) within each geographic area.
- **Residual Liability** – Many proponents seeking to dispose of soil will continue to use landfills if they can be held liable for soils that they have relocated to a donor site should the owner of that site become insolvent because of joint and several liability. Given the proposed improvements to the soil relocation regulatory regime, the soils that are moved to sites will comply with the land use designations of the receiver sites. We therefore recommend that proponents who follow the rules and act in good faith be indemnified of future liability for the soils they relocated. As previously noted, we would appreciate commentary from the Ministry regarding applicability of Technical Guidance Document 1 to various soil testing scenarios. That clarification would reduce discrepancy of soil testing procedures between environmental consultants and allow for a more consistent 'industry standard' for soil testing prior to transfers.
- **Use of Qualified Professionals** – It is noted in the Appendix that the Ministry received comments from the consultation process regarding "... *the potential role of the Society*

of Contaminated Site Approved Professionals of British Columbia (CSAP) in the process proposed by ENV ...”. However, there is no proposed changes for expanding the role of these professionals in the soil relocation process – even though there are still staffing challenges and approval delays at the Ministry. We ask that the Province consider using qualified professionals to review and approve Contaminated Soil Relocation Agreements on behalf of the Ministry of Environment.

- **Triggering of the Contaminated Sites Process** – After reviewing the Final Policy Direction, it is unclear whether being on the registry as a soil receiving site be a trigger into the contaminated sites process (ie. require an instrument), should that site be redeveloped in the future. We ask that the Ministry provide further clarification on these requirements and triggers.

UDI asks that the Ministry consider our recommendations to improve the proposed soil relocation regulatory process. As you know, UDI has a dedicated Contaminated Sites Committee and we would be pleased to meet with Ministry staff to discuss these issues further. If you have any questions, regarding our comments, please don't hesitate to contact us and UDI looks forward to working with the Ministry on this and other important initiatives.

Yours sincerely,



Anne McMullin
President & CEO